



INTERIOR BOARD OF INDIAN APPEALS

Estate of Clarence Peter Butterfly

34 IBIA 245 (02/10/2000)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF CLARENCE PETER
BUTTERFLY

: Order Affirming Decision
:
: Docket No. IBIA 99-85
:
: February 10, 2000

Appellant Earl Butterfly, Jr., sought review of an April 30, 1999, order denying rehearing issued in the estate of Clarence Peter Butterfly (Decedent) by Administrative Law Judge Nicholas T. Kuzmack. IP SL 040F 98-BF. The Judge's denial of rehearing let stand his October 30, 1998, order approving Decedent's May 24, 1977, will. For the reasons discussed below, the Board of Indian Appeals (Board) affirms the denial of rehearing.

Appellant is Decedent's nephew. In his notice of appeal, Appellant alleged that Decedent executed two wills. Although he did not identify either will in his notice of appeal, it appears that the two wills are the May 24, 1977, will approved by Judge Kuzmack, and a handwritten document dated April 18, 1988, which Judge Kuzmack considered in his order denying rehearing. The April 1988 document states:

To whom it my [sic] concern:

I Clarence [sic] Butterfly would like to make my will. Like as it is written here. I would like all of my land and interest to be given to my nieces and nephews at a equal share. I will one dollar too [sic] Dewey Butterfly [Decedent's only child] and Violet Burd Butterfly [Decedent's former wife]. Faye Burd Red Fox [Decedent's niece].

This document appears to be signed by Decedent, and is notarized. On the back of the document is written:

All Earl Butterfly Sr. child
[Illegible name]
Earl Butterfly JR.
Lolita Butterfly
William Butterfly
James Butterfly
Jamie [?] Butterfly
Ronald Butterfly
Ramona Butterfly

Although the Board is not expert in handwriting analysis, the body of the April 1988 document does not appear to have been written by the person who signed it. The names on the back of the document appear to have been written by the person who wrote the body of the document.

Judge Kuzmack addressed this document at page 1 of his October 30, 1998, order:

A handwritten letter dated April 18, 1988, addressed to “to whom it my [sic] concern,” and signed by decedent purports to dispose of decedent’s estate. However, the letter does not bear the signatures of two witnesses as required by 43 C.F.R. § 4.260. Therefore, the letter can not be recognized as a will for purposes of this proceeding.

In its October 26, 1999, notice of docketing, the Board stated:

[Appellant’s] appeal appears to fall into an area of settled law. The Board has held that a handwritten document purporting to be an Indian will must meet all of the requirements of 43 C.F.R. § 4.260(a), including attestation by two disinterested witnesses. See Estate of Julia Tieyah, 11 IBIA 211 (1983); and Estate of Emory Dennis Juneau, 7 IBIA 164 (1979). As Judge Kuzmack noted, there are no signatures of attesting witnesses on the April 1988 document.

Notice of Docketing at 3. The notice of docketing further advised Appellant that he bore the responsibility for proving the error in Judge Kuzmack’s decision.

Despite being advised of his right to do so, Appellant did not file an opening brief. Thus, he has neither challenged the Board’s conclusion that the “second will” to which he refers is the April 1988 handwritten document nor attempted to show that that document is not covered by the Board’s prior decisions. Under these circumstances, the Board finds that this appeal falls into an area of settled law and that Appellant has failed to carry his burden of proving that the April 1988 document should nevertheless be considered a valid will.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, Judge Kuzmack’s April 30, 1999, order denying rehearing is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge